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UNCLAS SECTION 01 OF 05 TUNIS 001495

SIPDIS

SENSITIVE

STATE FOR EB AND NEA/MAG (LAWRENCE)
STATE PLEASE PASS TO COMMERCE FOR ITA/MAC/ONE (DAVID ROTH)
AND ADVOCACY CENTER (CHRIS JAMES), TO USTR (DOUG BELL), AND
TO USPTO (MICHAEL ADLIN)
CASABLANCA FOR FCS (GAIL DEL ROSAL)

E.O. 12958: N/A
TAGS: ECON EFIN ETRD TS EFTA
SUBJECT: USTR NOVELLI ADVANCES US-TUNISIA TRADE
RELATIONSHIP THROUGH TIFA COUNCIL

REF: A. TUNIS 898 (BOOZ ALLEN HAMILTON VISIT)

¶B. TUNIS 1238 (A/S LASH W/ JOUINI)
¶C. TUNIS 1257 (EVE OF TIFA/ECON REFORMS)

¶1. (SBU) Summary. Assistant Trade Representative Catherine Novelli, in Tunis June 14-15 for the second TIFA Council meeting, firmly emphasized to Minister of Development and International Cooperation Jouini that the U.S. wants to expand our free trade community and is working at a modest pace, but stressed that Tunisia would need to address comprehensive requirements for a Free Trade Agreement (FTA) and adapt its economic and legal framework before negotiations could begin. Jouini noted that significant economic reform efforts were underway in Tunisia, but repeatedly expressed concern about job creation and export promotion, while spotlighting special sensitivities such as services and retail franchising. USG and GOT experts will form working groups to address specific differences on services, investment, intellectual property, and standards. End Summary.

¶2. (SBU) During her two-day visit to Tunisia, Assistant U.S. Trade Representative Catherine Novelli delivered a frank and positive message to GOT and private sector representatives on free trade with the U.S. Novelli and Minister Mohamed Nouiri Jouini (Ministry of Development and International Cooperation) led delegations through a day-long Trade and Investment Framework Agreement (TIFA) Council that systematically covered the Tunisian context and U.S. expectations for an FTA. The main topics were services, investment, government procurement, customs, intellectual property, and market access. This was the second TIFA Council since the TIFA was signed in October 2002; the first Council was in Washington in October 2003.

¶3. (SBU) While the Tunisians showed no immediate intent to depart from their current, gradual approach to economic reform, Novelli's comprehensive enumeration of FTA requirements (and the benefits of adopting them) helped frame the GOT's responsive rhetoric positively toward international economic integration. Throughout her discussions, Novelli stressed the benefits from regional integration as envisioned in the Middle East Free Trade Area, and articulated the desire to see Tunisia play a leadership role in realizing that objective. Minister Jouini spoke frankly about the current state of Tunisia's economic landscape and the challenges that lie ahead and expressed hope that the gap between our trade and investment issues will be narrowed.

Economic Overview: Employment is Number One

¶4. (SBU) In his introductory overview of the economy, Jouini expressed concern about Tunisia's official unemployment rate (currently 14-plus percent). He noted that "all countries of the region are converging toward the same economic model to attract foreign investment with export-led growth" and that competition is increasing. Jouini desires greater engagement with the U.S. that can help address Tunisian concerns in practical ways. Jouini noted that Tunisia, as a small country, must exploit "niches" where Tunisia's comparative labor advantages might find new markets.

¶5. (SBU) Jouini summarized Tunisia's economic situation and successes, but expressed concern that globalization has resulted in highly-competitive, rapid-response businesses that, for example, threaten the destruction of Tunisia's textile sector, which has reportedly lost 50,000 jobs since January 2005. He also outlined continued privatization of state-owned enterprises, increasing investment in research and development, improving the banking system, and liberalizing the services sector as particular challenges ahead. Jouini also noted the heavy dependence on the European Union, which accounts for 80 percent of Tunisia's trade, for both imports and exports. Tunisia will eliminate tariffs with the EU on manufactured items by 2008; Novelli noted that Tunisia's heavy lifting in this regard would mean

that expanding those reforms to encompass U.S. interests would be a far less challenging endeavor.

Services

¶6. (SBU) Discussions indicated that services could remain problematic for some time, especially for retail establishments. Jouini noted that Tunisia had met the WTO-agreed May 31, 2005, deadline for the submission of WTO services offers, but that the issue remains contentious. According to Jouini, the EU and Tunisia had intended to begin negotiations on services in 2003, but have yet to do so because Tunisia opposes the EU's attempt to frame the issue within an approach covering the Mediterranean region. Jouini stated that he does not believe the region is ready to open up under a collective agreement on services, nor that Tunisia has the resources to invest abroad. Tunisia's expatriate workforce is provider of "services" and a form of external investment abroad, therefore according to Jouini, the "movement of natural persons and population flows" should be included into the trade and investment dialogue, though he acknowledged that security and immigration are also factors under this topic.

¶7. (SBU) Novelli suggested that opening up financial and banking services might provide a much needed jump start to the Tunisian economy and explained how a "negative list" approach (opening of all services, except for limited exceptions) would guide FTA negotiations with the U.S. Jouini responded that foreign banks are permitted in Tunisia under Tunisia's Universal Banking Law of 2001. Novelli asked whether banks may enter under any form, but Jouini cautioned he would have to verify that. He then shifted direction by noting that Tunisia still suffers from a glut of banks that are still in the process of consolidation and weaning from full or partial state ownership.

¶8. (SBU) Jouini detailed a list of services where foreign investment is restricted or which are subject to "case by case" authorization from the Ministry of Commerce. The list of restricted services is long and, effectively closure is the norm and opening the exception. Professional services (doctors, lawyers, engineers) require Tunisian nationality. Advertising, telecommunications, education, venture capital, insurance, and retail distribution all require prior approval to enter. Jouini claimed in slightly different terms that anticipated negative "social impact" has mandated the current, restrictive approach to opening these sectors.

¶9. (SBU) Jouini explained that Tunisian nationality is also still required for top management positions at banks or universities. Novelli took issue with Tunisia's limitation of senior foreign management which requires authorization by the Ministry of Employment to exceed 4 foreign executives. Jouini indicated that the GOT will alter laws in the near term to permit foreign executive presence to be a percentage of total employees, but Jouini did not provide this percentage.

Investment: Some Stirrings of Opening

¶10. (SBU) Jouini highlighted the positive developments occurring with private sector entrants into mobile telephone operations and envisioned more overall investment as Tunisia strives to attain 66 percent private sector contribution to GDP. Jouini suggested that further private investment will occur in the energy and banking sectors in the near term. The energy sector is open to foreign investment for production (especially oil and gas), although distribution of electricity remains under the state monopoly, STEG. For manufacturing industries (currently clumped into exporting and non-exporting categories with differential treatment), Jouini advised that the GOT intends to eliminate the distinction between onshore and offshore companies by 2009.

¶11. (SBU) Despite this, investing in Tunisia remains very restricted, with the only significant, unrestricted investment allowed in manufacturing industries that directly create jobs. The retail sector limits foreign ownership to 49 percent, which is subject to screening processes run by the Ministry of Commerce. Effectively, the GOT analyses foreign investment based on the sector, then uses "economic/social impact" criteria in determining whether to grant "authorization" to participate, though there are no written regulations guiding this process. Novelli contended that such an "authorization" process can be used to create "performance requirements" that are not transparent and which raise significant questions regarding actual implementation.

¶12. (SBU) Novelli responded favorably to the positive steps Tunisia is taking to encourage greater foreign investment, but advised that such pre-screening and limits on foreign ownership and management are antithetical to FTA norms and that a significant overhaul of Tunisia's approach would still be required. According to Jouini, the Tunisian legal framework does not address franchising rights or procedures

for handling them as separate legal constructs; thus, franchises are treated as an investment issue subject to the above stipulations. Novelli noted the absence of U.S franchises in Tunisia and said that clearly more must be done to address this issue for further progress in discussions on investment.

¶13. (SBU) Novelli raised investment problems for a U.S. company subsidiary, EnerCiel, which is seeking to develop renewable wind energy projects here (see reftels for more background). Jouini pledged that EnerCiel's landlease would be reinstated and honored, though he noted the problem has a complicated genesis. Jouini also pledged to resolve the dispute by bringing EnerCiel and STEG together at his Ministry.

Intellectual Property Rights

¶14. (SBU) Novelli introduced the topic of intellectual property by noting that the rapid evolution of technology has raised many new issues since the WTO's inception and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Therefore, Novelli explained that U.S. FTAs require provisions considered "TRIPs-plus" to cover advances in intellectual property protections and enforcement that have become part of contemporary international practices. Novelli outlined the "national treatment" concept to protect all creators of intellectual property, without regard to author's nationality, and indicated this would be an important issue to address.

¶15. (SBU) Patents. Novelli also firmly advised the Tunisian side that it must bolster its protections against "unfair commercial use" (TRIPs Art. 39.3) of marketing and licensing materials. She encouraged the GOT to protect more effectively research and development in patent fields, such as pharmacology and biotechnology and noted that the USG would be following Tunisia's commitments to Art. 39.3 through the annual Special 301 interagency review process.

¶16. (SBU) Novelli encouraged the GOT to adopt the WIPO Copyright and Performances and Phonograms treaties to come into fuller compliance with international standards. The Tunisian side admitted that, while not yet adopted, these treaties were currently under consideration at the Ministry of Culture. The Tunisian delegation also stated that Tunisia's Law 36-1994 is applicable and extends by logical deduction to copyrightable works, including those on the internet and thus the failure to ratify these treaties was not determinative or a bar to effective enforcement.

¶17. (SBU) Finally, Novelli raised the growing incidence of software piracy in Tunisia, citing a recent Business Software Alliance report that claims 84 percent of all software in Tunisia is pirated. Jouini and team sought to explain this by arguing that both government and private sector bear responsibility for policing piracy and that government should not be expected to enforce if industry was not bringing infractions to the government's attention. The Tunisian side also stated that piracy is a global phenomenon that countries like Tunisia are ill-equipped to deal with.

Market Access

¶18. (SBU) The Tunisian side noted that U.S. imports are a mere 2 percent of total Tunisian imports. For Tunisian exporters, the U.S. Generalized System of Preferences (GSP), which excludes most textiles from preferred tariffs, poses difficulties. The Tunisian delegation also noted difficulties in shifting from European product "standards" to U.S. ones, and requested USG technical assistance.

¶19. (SBU) Tariffs. GOT interlocutors noted that Tunisia is guiding its general tariff policy under WTO tariff-elimination goals, but is currently preoccupied with bringing its applied tariff rates into line with EU rates. Jouini's team indicated that Tunisia's trade agreement with the EU, however, only covers manufactured goods, and not, for example, agricultural products. Tunisia's agricultural sector employs approximately 22 percent of the workforce. Novelli noted that certain transition periods can be negotiated for a limited number of products or sectors from both sides in any U.S. FTA.

Other Issues

¶20. (SBU) Government Procurement. Novelli raised government procurement and decision appeals for aggrieved bidders as an area where improvement could also be made. Jouini stated that all Tunisian public tenders are awarded on a competitive basis and the GOT enacted legislation in Decree #2003-1638 of August 2003 to bring Tunisian practices and procedures to international standards. Jouini also noted that sole-source government contracting is not permitted by Tunisian law, except where the contractee holds a monopolistic position.

¶21. (SBU) Customs. Novelli explained FTA requirements on customs cooperation, transparency, and the current U.S. position on rules of origin. Ministry of Commerce expert Khadija Chaloul digressed into micro-detail on rules of origin and what constitutes "sufficient transformation", also noting specific criteria that depend on type of product. Novelli suggested that given Chaloul's expertise these topics would best be left for more detailed expert discussions later.

¶22. (SBU) Labor and Environment. Novelli laid out FTA requirements for "effective enforcement of existing labor and environmental laws" as they affect bilateral trade. Jouini foresaw no major issues in this regard, noting Tunisia's long-standing tradition of labor rights and significant spending on environmental protection, which he cited at 1.5 percent of GDP. Novelli also emphasized throughout the day that "transparency" and the existence of a clear channel for public comment on law and regulation procedures are woven throughout an FTA and its underlying principles and should be better addressed by the GOT.

Conclusion/Technical Assistance

¶23. (SBU) Novelli and Jouini agreed to establish formal working groups on services, investment, intellectual property, market access and standards to refine issues and study gaps between systems, as well as to create better understanding of where USG technical assistance might help bridge those gaps. One particular request for technical assistance was in the area of "standards," specifically how Tunisian products targeted primarily for European markets could be adapted to conform with U.S. market standards. The Tunisians have also previously expressed interest in additional information on franchising practices and benefits (ref B).

Outside meetings with Private sector

¶24. (SBU) Novelli addressed three separate, private sector audiences on June 14. Fifty members of the Tunisian American Chamber of Commerce (TACC) expressed their generally strong support for USG engagement with the Tunisian government to spur economic growth through small and medium-sized company entrepreneurial initiatives, as many of the local Chamber members are part of that community. Novelli also spoke to a forty-person group from Tunisia's key exporting sectors, including textiles, agriculture, and manufacturing, to inform Tunisian stakeholders of FTA benefits and commitments, and to seek greater understanding for local industrial concerns. Finally, the Arab Institute of Business Leaders (a local think-tank) hosted a small private dinner for the U.S. delegation. At this event, President Chekib Nouira of Tunisia's leading private bank, the Bank Internationale Arabe de Tunisie, questioned whether U.S. business would not essentially devour Tunisia's economic interests if the economy opened more rapidly. Other business leaders however were quietly more positive on Tunisia's opening to the U.S.

Comment and Recommendation

¶25. (SBU) Assistant U.S. Trade Representative Novelli,s visit sparked renewed interest regarding enhancing economic liberalization, the process of international regional integration, and whether the pace it has set should be accelerated. Novelli,s visit clearly helped define some key areas where we can expect resistance from the Tunisians and highlighted areas where less work will be needed.

¶26. (SBU) The GOT is balancing the near-term costs of economic reform with the necessity of staying competitive in a global context and providing a counterweight to its economic dependence on the EU. Thus, while agreeing to the principles of open trade and investment, the GOT nonetheless emphasizes the virtues of maintaining a deliberate pace on key reforms. Restrictions on foreign ownership of retail services, franchises, education and several other key sectors of the economy will likely remain very resistant to near-term liberalization. Major reform of customs procedures will continue to be difficult, as it is a bureaucracy that appears resistant to reform and subject to arbitrary practices, as well as anecdotally implicated in Tunisia's burgeoning black market economy. Tunisia has some serious gaps regarding protection of intellectual property, whether due to the magnitude of the problem or due to a lack of understanding of the benefits derived from a robust intellectual property regime. The will to enforce IPR norms in Tunisia is still in its infancy. Agriculture will remain a high hurdle to overcome, and it is likely the Tunisians would seek long transition periods in this sector.

¶27. (SBU) We note that telecommunications and technology-related industries clearly offer opportunities for more accelerated liberalization, as the GOT has emphasized its urgent need to create jobs in that sector. Foreign ownership of IT businesses, unlike retail, is less prone to displacing existing owners or workers and is thus more likely

to follow manufacturing, a virtually open sector. Our engagement with technical assistance programs--such as the U.S. Patent and Trademark Office--on intellectual property enforcement could be accelerated to support this trend.
HUDSON